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172; *Ex parte Carter*, 166 Mo. 604. And the Federal Supreme Court has sanctioned this view. *Counselmen v. Hitchcock*, 142 U. S. 204. There seems little room, however, to dispute the validity of a provision as explicit and far-reaching as that in the principal case.

DIVORCE—CONDONATION.—*WOLVERTON V. WOLVERTON*, 71 N. E. 123 (IND.).—Plaintiff, after having been treated with extreme brutality by defendant, co-habited with him during the night following such treatment. *Held*, that such act of co-habitation on the part of the plaintiff did not constitute condonation.

It is now well established that the doctrine of condonation applies to cruelty as well as to adultery. *Wilson v. Wilson*, 16 R. I. 122; *Clague v. Clague*, 46 Minn. 461; *Sasser v. Sasser*, 69 Ga. 576. But condonation by a wife, even after repeated acts of cruelty will not be lightly presumed. *Douglas v. Douglas*, 81 Iowa 258; *Smith v. Smith*, 119 Cal. 183. Even though a wife remains for an extended period in same house with her husband after the offense, there is no condonation if marital relations are not resumed. *Rudd v. Rudd*, 66 Vt. 91; *Dennison v. Dennison*, 4 Wash. 705. Where evidence showed co-habitation for some time after acts complained of, it was held that the court need not rule that condonation was shown as matter of law. *Osborn v. Osborn*, 174 Mass. 399. The present case thus seems to follow the general trend of decisions.

GAMING—BETS ON HORSE RACES—SENDING MONEY OUTSIDE THE STATE.—*MCQUESTEN V. STEINMETZ*, 58 ATL. 876. (N. H.).—*Held*, that one, who as agent receives and transmits money by telegraph to parties in another state to be placed upon horse races, does not violate statute which declares illegal the carrying on of a gambling business.

Statutes declaring the keeping of a gambling house illegal are passed on grounds of public policy. See XIV *Yale Law Journal* 11. A statute making illegal the maintaining of a gaming house, says Judge Cooley in *People v. Weithoff*, 51 Mich. 215, applies obviously in the case of a room intended to facilitate betting on horse races although they are distant. *People v. Weithoff*, 93 Mich. 634; *Williams et al. v. State*, 92 Tenn. (8 Pickle). 275. The present case, totally oblivious of the principles above and following the lead of *Lescallet v. Com.*, 89 Va. 878, given by a divided court, considers bets offered by telegraph to be contracts completed in another state and lawful, thus making the statute of no effect. There is a growing tendency to prevent the sending of money for betting purposes outside the state by direct statutory provision.

INNKEEPERS—LIABILITY TO GUESTS—PERSONAL INJURIES.—*CLANCY V. BARKER*, 131 FED. 161.—*Held*, that an innkeeper does not insure the safety of his guests against injuries which are inflicted upon them by the negligent or wilful acts of his servants beyond the scope of their employment. *Thayer, J., dissenting.*

Even a carrier of passengers is not an insurer of their safety. *Chicago, etc., R. Co. v. Carrol*, 144 Ill. 261; *Gr. Rap. & Ind. R. Co. v. Huntley*, 38 Mich. 537; but he is bound to exercise the highest degree of care. *Jackson v. Tollett*, 2 Stack. 37; *P. & R. R. Co. v. Derby*, 14 How. 168. The basis of this requirement is the dangerous nature of the service he renders. *Indianapolis, etc. R. Co. v. Horst*, 93 U. S. 291; *Hale, Bailments*, 518. This

consideration does not apply to innkeepers, and they are held only to that care which is required of others who invite persons upon their premises, that is, ordinary care. *Sneed v. Moorehead*, 70 Miss. 690; *Weeks v. McNulty*, 101 Tenn. 495. And the carrier is also generally held liable for injuries inflicted by its employees though not in the course of their employment. *Bryant v. Rich*, 106 Mass. 180; the basis of this decision is a clause read into the contract by construction of law. *Chic., etc. R. Co. v. Barrett*, 16 Ill. App. 17. But liability is, in England, and in some of our states, restricted to injuries done within the course and scope of the employment. *Bayley v. Ry. Co.*, L. R. 8 C. P. 148; *Evansville, &c., R. Co. v. Baum*, 26 Ind. 70. It is difficult to see why the contract of the innkeeper does not, in this aspect, stand on the same ground as that of the carrier; and we find the same conflict of authority; thus in *Rommel v. Schambacher*, 120 Pa. St. 579, the innkeeper is held liable for injuries inflicted by his servants beyond the course of their employment; but *Wade v. Thayer*, 40 Cal. 578, in applying the usual rules of agency, perhaps represents the view of most courts.

JURORS—COMPETENCY—NUMBER OF PEREMPTORY CHALLENGES.—*STEVENS v. UNION R. CO.*, 58 ATL. 492 (R. I.).—*Held*, that the allowance of peremptory challenges of jurors, in excess of the statutory provision, is not reversible error in the absence of a showing of prejudice to the party excepting.

On the other hand, the allowance to a party of a peremptory challenge after those allowed by law have been exhausted is held harmful error in *Funk v. Ely*, 45 Pa. St. 448. So the Texas court speaks on the seeming assumption that a party had the right to retain for the jury one who was excluded on insufficient cause and without peremptory challenge by the opposing party. *Pierson v. State*, 21 Tex. App. 14. The Pennsylvania rule seems to harmonize best with the reasons for allowing peremptory challenges, but the weight of authority appears to favor the rule in the present case. Thus it is said that a party has no vested right to any particular juror, but only to an impartial jury. *State v. Dalton*, 69 Miss. 611; and the allowance of too many peremptory challenges to one party is held not to be sufficient ground for appeal by the opposing party who is not prejudiced thereby. *Bibb v. Reid*, 3 Ala. 88.

LIBEL—ARTICLES LIBELOUS PER SE.—*MARTIN v. PRESS PUB. CO.*, 87 N. Y. SUPP. 859.—*Held*, that a publication, concerning one who possesses extraordinary attainments in learning, that he is poverty stricken and starving because of over education, holds him up to ridicule, tends to alter his station in society for the worse, and is hence libelous *per se*. Bartlett and Jenks, JJ., *dissenting*.

The doctrine that, where no crime is imputed, special damages must be proven, was very early set aside, a distinction being recognized between mere words and printed or written statements; *Holt, Libel*, (1st Amer. Ed.) 218. Scandalous matter is not necessary to make a libel. It is enough if the publication induce an ill opinion to be had of the plaintiff or make him appear ridiculous. *Cropp v. Tilney*, 3 Salk. 226. An accusation of poverty is not libelous *per se*. *Moffatt v. Cauldwell*, 3 Hun 26. But one's circumstances and the fact of his alleged poverty may be so put as to excite ridicule. The inquiry is into its natural effect upon the friends and neighbors of the person aimed at. *Moffatt v. Cauldwell, supra*. An article tending to hold one up to ridicule as a man is libelous *per se*. *Battersby v. Collier*, 48 N. Y. Supp. 976; *Giles v. State*, 6 Ga. 276.